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**REM 2/2000**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.11.2000

NOT TO BE PUBLISHED

**COMMISSION DECISION**

**Of 9.11.2000**

**finding that repayment of import duties is justified in a particular case**

**(Request submitted by Finland)**

**(REM 2/2000)**

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THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Communities,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,<sup>1</sup> as last amended by Regulation (EC) No 955/1999,<sup>2</sup>

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,<sup>3</sup> as last amended by Regulation (EC) No 1602/2000,<sup>4</sup> and in particular Article 907 thereof,

Whereas,

- (1) By letter dated 4 February 2000, received by the Commission on 9 February 2000, Finland asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances.
- (2) For ten years a Finnish firm imported frozen crayfish cooked in dill from the USA. These goods were always classified under tariff heading 0306 19 10 of the Combined Nomenclature.

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<sup>1</sup> OJ No L 302, 19.10.1992, p.1

<sup>2</sup> OJ No L 119, 7.5.1999, p.1

<sup>3</sup> OJ No L 253, 11.10.1993, p.1

<sup>4</sup> OJ No L 188, 26.7.2000, p.1

- (3) Under Council Regulation (EC) No 3093/95 of 22 December 1995 laying down the rates of duty to be applied by the Community resulting from negotiations under GATT Article XXIV.6 consequent upon the accession of Austria, Finland and Sweden to the European Union<sup>5</sup> and Commission Regulation (EC) No 345/96 of 27 February 1996 amending Annex I to Council Regulation (EC) No 1808/95 opening and providing for the administration of Community tariff quotas bound in GATT for certain agricultural, industrial and fisheries products and establishing the detailed provisions for adapting these quotas,<sup>6</sup> a duty-free quota was applied to frozen crayfish falling under heading 0306 19 10 of the Combined Nomenclature.
- (4) During the summer of 1996 the firm imported three consignments of frozen crayfish cooked in dill. They were classified under CN code 0306 19 10. The firm was therefore able to benefit from the quota and did not pay customs duties when the goods were released for free circulation.
- (5) Following a post-clearance check the competent authorities found that the goods should have been classified under CN code 1605 40 00 and were therefore not eligible to benefit from the duty-free quota. The competent Finnish authorities therefore asked the company to pay the import duties due, i.e. a total of XXXX - the amount in respect of which repayment has been requested.
- (6) In support of the application submitted by the competent Finnish authorities the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.

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<sup>5</sup> OJ No L 334, 30.12.1995, p.1

<sup>6</sup> OJ No L 49, 28.2.1996, p. 3

- (7) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 3 April 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (8) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (9) Court of Justice case law indicates that Article 239 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.
- (10) The dossier sent to the Commission by the Finnish authorities indicates that the three consignments of crayfish should have been classified under CN code 1605 40 00 and the firm was therefore not eligible to benefit from the tariff quota applicable to goods falling under CN code 0306 19 10.
- (11) However, the tariff quota had been established specifically to cover products of the type imported by the firm. Before Finland's accession to the Community, frozen crayfish cooked in dill had traditionally been imported into Finland and Sweden from the United States duty-free. Following the accession of Finland and Sweden to the Community the tariff quota in question, bound in the GATT, was established as a compensatory measure and allowed 3 000 tonnes per year of frozen crayfish cooked in dill to be imported duty-free into the Community.

- (12) It was thus an error on the part of the Community authorities, acting through Regulations (EC) No 3093/95 and (EC) No 345/96, to assign to the duty-free quota CN code 0306 19 10 and the description "crayfish, frozen". The Community authorities had based this tariff classification on the one used by Sweden before its accession to the Community for crayfish cooked in dill, i.e. 0306 19 10. Since the products referred to by the tariff quota should in fact have been classified under CN code 1605 40 00, it was an error on the part of the Community authorities, and a violation of their international obligations, to open the tariff quota with reference to CN code 0306 10 19. Furthermore, this error has been acknowledged on a number of occasions by the Community authorities, notably in a letter of 25 April 1998 addressed to the firm's representative.
- (13) When Regulation (EC) No 1401/98 of 22 June 1998<sup>7</sup> was adopted, the Council corrected this error and amended the description and tariff classification of the quota with effect from 1 January 1998. It also explicitly stated in the seventh recital of that Regulation that the purpose of the amendment was for the Community to apply the tariff quotas correctly and meet its international obligations.
- (14) It follows that if the Community authorities had not made this mistake the three consignments of crayfish imported by the firm could have benefited from the exemption from import duties, since the goods corresponded in technical terms to those which the tariff quota was actually intended to cover. Moreover, at the same time in Sweden the same products were classified under CN code 0306 19 10 and benefited from the tariff quota without any opposition from the Swedish authorities.
- (15) It should also be noted that the tariff quota, assigned to CN code 0306 19 10, is still not exhausted for 1996, the year in which the three consignments were imported.

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<sup>7</sup> OJ No L 188, 2.7.1998, p.1

- (16) Therefore all the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. Even if the crayfish could not be classified under CN code 0306 19 10, it nevertheless constituted the product which the tariff quota was actually intended to cover.
- (17) In the circumstances of this case no deception or obvious negligence can be attributed to the firm concerned, as the competent Finnish authorities confirm in their letter of 4 February 2000 to the Commission.
- (18) The fact that the firm declared the goods under CN code 0306 19 10 instead of 1605 40 00 cannot be considered obvious negligence on its part. Since it was complying with the accepted practice of the previous ten years whereby frozen crayfish cooked in dill were imported into Finland and Sweden from the United States duty-free under code 0306 19 10, the firm had no reason to doubt the rightness of its classification and had legitimate reason to believe that it was correct. Furthermore, its absence of doubts was reinforced by the fact that it knew that products identical to those it was importing had been released for free circulation in 1996, but also in previous years, in Sweden, the main importer of these products, under the same CN code and duty-free without any opposition on the part of the competent Swedish authorities.
- (19) Therefore the repayment of import duties is justified in this case,

HAS ADOPTED THIS DECISION:

*Article 1*

The repayment of import duties in the sum of XXXXX requested by Finland on 4 February 2000 is justified.

*Article 2*

This decision is addressed to Finland.

Done at Brussels, 9.11.2000

*For the Commission*

*Member of the Commission*